

AMENDED IN ASSEMBLY APRIL 30, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1298

Introduced by Assembly Member Daucher

February 21, 2003

An act to amend ~~Section~~ *Sections 1771 and 1788* of, and to add Section 1788.5 to, the Health and Safety Code, relating to continuing care contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1298, as amended, Daucher. Continuing care contracts: retirement communities: elderly.

Under existing law, the State Department of Social Services is responsible for regulating activities relating to continuing care contracts for retirement communities that provide for the long-term residential, social, and health care needs of elderly residents. Existing law requires every continuing care contract to contain specified information, including a list of the services that will be made available to the resident as required to provide the appropriate level of care. Existing law requires this list to include regular observation of the resident's health status to ensure that his or her dietary needs, social needs, and needs for special services are satisfied.

This bill would require a continuing care contract to include a description of the monitoring or observation methodology used by the provider for occupants of ~~residential~~ *independent* living units, *as defined*, and related information. This bill would provide; that, notwithstanding any other provision of law, a provider is deemed to have met its requirement for observing or monitoring occupants of

~~residential independent living units within a continuing care retirement community if certain conditions are met. This bill would specify that no provider shall be liable for death or injury to a resident under prescribed circumstances require the facility to obtain signed documentation from the resident that he or she understands the monitoring and observation requirements.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. *Section 1771 of the Health and Safety Code is*
- 2 *amended to read:*
- 3 1771. Unless the context otherwise requires, the definitions in
- 4 this section govern the interpretation of this chapter.
- 5 (a) (1) “Affiliate” means any person, corporation, limited
- 6 liability company, business trust, trust, partnership,
- 7 unincorporated association, or other legal entity that directly or
- 8 indirectly controls, is controlled by, or is under common control
- 9 with, a provider or applicant.
- 10 (2) “Affinity group” means a grouping of entities sharing a
- 11 common interest, philosophy, or connection (e.g., military
- 12 officers, religion).
- 13 (3) “Annual report” means the report each provider is required
- 14 to file annually with the department, as described in Section 1790.
- 15 (4) “Applicant” means any entity, or combination of entities,
- 16 that submits and has pending an application to the department for
- 17 a permit to accept deposits and a certificate of authority.
- 18 (5) “Assisted living services” includes, but is not limited to,
- 19 assistance with personal activities of daily living, including
- 20 dressing, feeding, toileting, bathing, grooming, mobility, and
- 21 associated tasks, to help provide for and maintain physical and
- 22 psychosocial comfort.
- 23 (6) “Assisted living unit” means the living area or unit within
- 24 a continuing care retirement community that is specifically
- 25 designed to provide ongoing assisted living services.
- 26 (7) “Audited financial statement” means financial statements
- 27 prepared in accordance with generally accepted accounting
- 28 principles including the opinion of an independent certified public
- 29 accountant, and notes to the financial statements considered

1 customary or necessary to provide full disclosure and complete
2 information regarding the provider's financial statements,
3 financial condition, and operation.

4 (b) (reserved)

5 (c) (1) "Cancel" means to destroy the force and effect of an
6 agreement or continuing care contract.

7 (2) "Cancellation period" means the 90-day period, beginning
8 when the resident physically moves into the continuing care
9 retirement community, during which the resident may cancel the
10 continuing care contract, as provided in Section 1788.2.

11 (3) "Care" means nursing, medical, or other health related
12 services, protection or supervision, assistance with the personal
13 activities of daily living, or any combination of those services.

14 (4) "Cash equivalent" means certificates of deposit and United
15 States treasury securities with a maturity of five years or less.

16 (5) "Certificate" or "certificate of authority" means the
17 certificate issued by the department, properly executed and
18 bearing the State Seal, authorizing a specified provider to enter
19 into one or more continuing care contracts at a single specified
20 continuing care retirement community.

21 (6) "Condition" means a restriction, specific action, or other
22 requirement imposed by the department for the initial or
23 continuing validity of a permit to accept deposits, a provisional
24 certificate of authority, or a certificate of authority. A condition
25 may limit the circumstances under which the provider may enter
26 into any new deposit agreement or contract, or may be imposed as
27 a condition precedent to the issuance of a permit to accept deposits,
28 a provisional certificate of authority, or a certificate of authority.

29 (7) "Consideration" means some right, interest, profit, or
30 benefit paid, transferred, promised, or provided by one party to
31 another as an inducement to contract. Consideration includes some
32 forbearance, detriment, loss, or responsibility, that is given,
33 suffered, or undertaken by a party as an inducement to another
34 party to contract.

35 (8) "Continuing care contract" means a contract that includes
36 a continuing care promise made, in exchange for an entrance fee,
37 the payment of periodic charges, or both types of payments. A
38 continuing care contract may consist of one agreement or a series
39 of agreements and other writings incorporated by reference.

1 (9) “Continuing care advisory committee” means an advisory
2 panel appointed pursuant to Section 1777.

3 (10) “Continuing care promise” means a promise, expressed
4 or implied, by a provider to provide one or more elements of care
5 to an elderly resident for the duration of his or her life or for a term
6 in excess of one year. Any such promise or representation, whether
7 part of a continuing care contract, other agreement, or series of
8 agreements, or contained in any advertisement, brochure, or other
9 material, either written or oral, is a continuing care promise.

10 (11) “Continuing care retirement community” means a facility
11 located within the State of California where services promised in
12 a continuing care contract are provided. A distinct phase of
13 development approved by the department may be considered to be
14 the continuing care retirement community when a project is being
15 developed in successive distinct phases over a period of time.
16 When the services are provided in residents’ own homes, the
17 homes into which the provider takes those services are considered
18 part of the continuing care retirement community.

19 (12) “Control” means directing or causing the direction of the
20 financial management or the policies of another entity, including
21 an operator of a continuing care retirement community, whether
22 by means of the controlling entity’s ownership interest, contract,
23 or any other involvement. A parent entity or sole member of an
24 entity controls a subsidiary entity provider for a continuing care
25 retirement community if its officers, directors, or agents directly
26 participate in the management of the subsidiary entity or in the
27 initiation or approval of policies that affect the continuing care
28 retirement community’s operations, including, but not limited to,
29 approving budgets or the administrator for a continuing care
30 retirement community.

31 (d) (1) “Department” means the State Department of Social
32 Services.

33 (2) “Deposit” means any transfer of consideration, including
34 a promise to transfer money or property, made by a depositor to
35 any entity that promises or proposes to promise to provide
36 continuing care, but is not authorized to enter into a continuing
37 care contract with the potential depositor.

38 (3) “Deposit agreement” means any agreement made between
39 any entity accepting a deposit and a depositor. Deposit agreements
40 for deposits received by an applicant prior to the department’s

1 release of funds from the deposit escrow account shall be subject
2 to the requirements described in Section 1780.4.

3 (4) “Depository” means a bank or institution that is a member
4 of the Federal Deposit Insurance Corporation or a comparable
5 deposit insurance program.

6 (5) “Depositor” means any prospective resident who pays a
7 deposit. Where any portion of the consideration transferred to an
8 applicant as a deposit or to a provider as consideration for a
9 continuing care contract is transferred by a person other than the
10 prospective resident or a resident, that third-party transferor shall
11 have the same cancellation or refund rights as the prospective
12 resident or resident for whose benefit the consideration was
13 transferred.

14 (6) “Director” means the Director of Social Services.

15 (e) (1) “Elderly” means an individual who is 60 years of age
16 or older.

17 (2) “Entity” means an individual, partnership, corporation,
18 limited liability company, and any other form for doing business.
19 Entity includes a person, sole proprietorship, estate, trust,
20 association, and joint venture.

21 (3) “Entrance fee” means the sum of any initial, amortized, or
22 deferred transfer of consideration made or promised to be made by,
23 or on behalf of, a person entering into a continuing care contract
24 for the purpose of assuring care or related services pursuant to that
25 continuing care contract or as full or partial payment for the
26 promise to provide care for the term of the continuing care
27 contract. Entrance fee includes the purchase price of a
28 condominium, cooperative, or other interest sold in connection
29 with a promise of continuing care. An initial, amortized, or
30 deferred transfer of consideration that is greater in value than 12
31 times the monthly care fee shall be presumed to be an entrance fee.

32 (4) “Equity” means the value of real property in excess of the
33 aggregate amount of all liabilities secured by the property.

34 (5) “Equity interest” means an interest held by a resident in a
35 continuing care retirement community that consists of either an
36 ownership interest in any part of the continuing care retirement
37 community property or a transferable membership that entitles the
38 holder to reside at the continuing care retirement community.

(6) “Equity project” means a continuing care retirement community where residents receive an equity interest in the continuing care retirement community property.

(7) “Equity securities” shall refer generally to large and midcapitalization corporate stocks that are publicly traded and readily liquidated for cash, and shall include shares in mutual funds that hold portfolios consisting predominantly of these stocks and other qualifying assets, as defined by Section 1792.2. Equity securities shall also include other similar securities that are specifically approved by the department.

(8) “Escrow agent” means a bank or institution, including, but not limited to, a title insurance company, approved by the department to hold and render accountings for deposits of cash or cash equivalents.

(f) “Facility” means any place or accommodation where a provider provides or will provide a resident with care or related services, whether or not the place or accommodation is constructed, owned, leased, rented, or otherwise contracted for by the provider.

(g) (reserved)

(h) (reserved)

(i) (1) “Inactive certificate of authority” means a certificate that has been terminated under Section 1793.8.

(2) “*Independent living unit*” means a living unit within a continuing care retirement community that is occupied by a resident who does not use assisted living services or nursing services.

(3) “Investment securities” means any of the following:

(A) Direct obligations of the United States, including obligations issued or held in book-entry form on the books of the United States Department of the Treasury or obligations the timely payment of the principal of, and the interest on, which are fully guaranteed by the United States.

(B) Obligations, debentures, notes, or other evidences of indebtedness issued or guaranteed by any of the following:

(i) The Federal Home Loan Bank System.

(ii) The Export-Import Bank of the United States.

(iii) The Federal Financing Bank.

(iv) The Government National Mortgage Association.

(v) The Farmer’s Home Administration.

1 (vi) The Federal Home Loan Mortgage Corporation of the
2 Federal Housing Administration.

3 (vii) Any agency, department, or other instrumentality of the
4 United States if the obligations are rated in one of the two highest
5 rating categories of each rating agency rating those obligations.

6 (C) Bonds of the State of California or of any county, city and
7 county, or city in this state, if rated in one of the two highest rating
8 categories of each rating agency rating those bonds.

9 (D) Commercial paper of finance companies and banking
10 institutions rated in one of the two highest categories of each rating
11 agency rating those instruments.

12 (E) Repurchase agreements fully secured by collateral security
13 described in subparagraph (A) or (B), as evidenced by an opinion
14 of counsel, if the collateral is held by the provider or a third party
15 during the term of the repurchase agreement, pursuant to the terms
16 of the agreement, subject to liens or claims of third parties, and has
17 a market value, which is determined at least every 14 days, at least
18 equal to the amount so invested.

19 (F) Long-term investment agreements, which have maturity
20 dates in excess of one year, with financial institutions, including,
21 but not limited to, banks and insurance companies or their
22 affiliates, if the financial institution's paying ability for debt
23 obligations or long-term claims or the paying ability of a related
24 guarantor of the financial institution for these obligations or
25 claims, is rated in one of the two highest rating categories of each
26 rating agency rating those instruments, or if the short-term
27 investment agreements are with the financial institution or the
28 related guarantor of the financial institution, the long-term or
29 short-term debt obligations, whichever is applicable, of which are
30 rated in one of the two highest long-term or short-term rating
31 categories, of each rating agency rating the bonds of the financial
32 institution or the related guarantor, provided that if the rating falls
33 below the two highest rating categories, the investment agreement
34 shall allow the provider the option to replace the financial
35 institution or the related guarantor of the financial institution or
36 shall provide for the investment securities to be fully collateralized
37 by investments described in subparagraph (A), and, provided
38 further, if so collateralized, that the provider has a perfected first
39 security lien on the collateral, as evidenced by an opinion of
40 counsel and the collateral is held by the provider.

1 (G) Banker's acceptances or certificates of deposit of, or time
2 deposits in, any savings and loan association that meets any of the
3 following criteria:

4 (i) The debt obligations of the savings and loan association, or
5 in the case of a principal bank, of the bank holding company, are
6 rated in one of the two highest rating categories of each rating
7 agency rating those instruments.

8 (ii) The certificates of deposit or time deposits are fully insured
9 by the Federal Deposit Insurance Corporation.

10 (iii) The certificates of deposit or time deposits are secured at
11 all times, in the manner and to the extent provided by law, by
12 collateral security described in subparagraph (A) or (B) with a
13 market value, valued at least quarterly, of no less than the original
14 amount of moneys so invested.

15 (H) Taxable money market government portfolios restricted to
16 obligations issued or guaranteed as to payment of principal and
17 interest by the full faith and credit of the United States.

18 (I) Obligations the interest on which is excluded from gross
19 income for federal income tax purposes and money market mutual
20 funds whose portfolios are restricted to these obligations, if the
21 obligations or mutual funds are rated in one of the two highest
22 rating categories by each rating agency rating those obligations.

23 (J) Bonds that are not issued by the United States or any federal
24 agency, but that are listed on a national exchange and that are rated
25 at least "A" by Moody's Investors Service, or the equivalent rating
26 by Standard and Poor's Corporation or Fitch Investors Service.

27 (K) Bonds not listed on a national exchange that are traded on
28 an over-the-counter basis, and that are rated at least "Aa" by
29 Moody's Investors Service or "AA" by Standard and Poor's
30 Corporation or Fitch Investors Service.

31 (j) (reserved)

32 (k) (reserved)

33 (l) "Life care contract" means a continuing care contract that
34 includes a promise, expressed or implied, by a provider to provide
35 or pay for routine services at all levels of care, including acute care
36 and the services of physicians and surgeons, to the extent not
37 covered by other public or private insurance benefits, to a resident
38 for the duration of his or her life. Care shall be provided under a
39 life care contract in a continuing care retirement community
40 having a comprehensive continuum of care, including a skilled

1 nursing facility, under the ownership and supervision of the
2 provider on or adjacent to the premises. No change may be made
3 in the monthly fee based on level of care. A life care contract shall
4 also include provisions to subsidize residents who become
5 financially unable to pay their monthly care fees.

6 (m) (1) “Monthly care fee” means the fee charged to a
7 resident in a continuing care contract on a monthly or other
8 periodic basis for current accommodations and services including
9 care, board, or lodging. Periodic entrance fee payments or other
10 prepayments shall not be monthly care fees.

11 (2) “Monthly fee contract” means a continuing care contract
12 that requires residents to pay monthly care fees.

13 (n) “Nonambulatory person” means a person who is unable to
14 leave a building unassisted under emergency conditions in the
15 manner described by Section 13131.

16 (o) (reserved)

17 (p) (1) “Per capita cost” means a continuing care retirement
18 community’s operating expenses, excluding depreciation, divided
19 by the average number of residents.

20 (2) “Periodic charges” means fees paid by a resident on a
21 periodic basis.

22 (3) “Permit to accept deposits” means a written authorization
23 by the department permitting an applicant to enter into deposit
24 agreements regarding a single specified continuing care retirement
25 community.

26 (4) “Prepaid contract” means a continuing care contract in
27 which the monthly care fee, if any, may not be adjusted to cover
28 the actual cost of care and services.

29 (5) “Preferred access” means that residents who have
30 previously occupied a residential living unit have a right over other
31 persons to any assisted living or skilled nursing beds that are
32 available at the community.

33 (6) “Processing fee” means a payment to cover administrative
34 costs of processing the application of a depositor or prospective
35 resident.

36 (7) “Promise to provide one or more elements of care” means
37 any expressed or implied representation that one or more elements
38 of care will be provided or will be available, such as by preferred
39 access.

(8) “Proposes” means a representation that an applicant or provider will or intends to make a future promise to provide care, including a promise that is subject to a condition, such as the construction of a continuing care retirement community or the acquisition of a certificate of authority.

(9) “Provider” means an entity that provides continuing care, makes a continuing care promise, or proposes to promise to provide continuing care. “Provider” also includes any entity that controls an entity that provides continuing care, makes a continuing care promise, or proposes to promise to provide continuing care. The department shall determine whether an entity controls another entity for purposes of this article. No homeowner’s association, cooperative, or condominium association may be a provider.

(10) “Provisional certificate of authority” means the certificate issued by the department, properly executed and bearing the State Seal, under Section 1786. A provisional certificate of authority shall be limited to the specific continuing care retirement community and number of units identified in the applicant’s application.

(q) (reserved)

(r) (1) “Refund reserve” means the reserve a provider is required to maintain, as provided in Section 1792.6.

(2) “Refundable contract” means a continuing care contract that includes a promise, expressed or implied, by the provider to pay an entrance fee refund or to repurchase the transferor’s unit, membership, stock, or other interest in the continuing care retirement community when the promise to refund some or all of the initial entrance fee extends beyond the resident’s sixth year of residency. Providers that enter into refundable contracts shall be subject to the refund reserve requirements of Section 1792.6. A continuing care contract that includes a promise to repay all or a portion of an entrance fee that is conditioned upon reoccupancy or resale of the unit previously occupied by the resident shall not be considered a refundable contract for purposes of the refund reserve requirements of Section 1792.6, provided that this conditional promise of repayment is not referred to by the applicant or provider as a “refund.”

(3) “Resale fee” means a levy by the provider against the proceeds from the sale of a transferor’s equity interest.

1 (4) “Reservation fee” refers to consideration collected by an
2 entity that has made a continuing care promise or is proposing to
3 make this promise and has complied with Section 1771.4.

4 (5) “Resident” means a person who enters into a continuing
5 care contract with a provider, or who is designated in a continuing
6 care contract to be a person being provided or to be provided
7 services, including care, board, or lodging.

8 (6) “Residential care facility for the elderly” means a housing
9 arrangement as defined by Section 1569.2.

10 (7) “Residential living unit” means a living unit in a
11 continuing care retirement community that is not used exclusively
12 for assisted living services or nursing services.

13 (s) (reserved)

14 (t) (1) “Termination” means the ending of a continuing care
15 contract as provided for in the terms of the continuing care
16 contract.

17 (2) “Transfer trauma” means death, depression, or regressive
18 behavior, that is caused by the abrupt and involuntary transfer of
19 an elderly resident from one home to another and results from a
20 loss of familiar physical environment, loss of well-known
21 neighbors, attendants, nurses and medical personnel, the stress of
22 an abrupt break in the small routines of daily life, or the loss of
23 visits from friends and relatives who may be unable to reach the
24 new facility.

25 (3) “Transferor” means a person who transfers, or promises to
26 transfer, consideration in exchange for care and related services
27 under a continuing care contract or proposed continuing care
28 contract, for the benefit of another. A transferor shall have the
29 same rights to cancel and obtain a refund as the depositor under the
30 deposit agreement or the resident under a continuing care contract.

31 *SEC. 2.* Section 1788 of the Health and Safety Code is
32 amended to read:

33 1788. (a) Any continuing care contracts shall contain all of
34 the following:

35 (1) The legal name and address of each provider.

36 (2) The name and address of the continuing care retirement
37 community.

38 (3) The resident’s name and the identity of the unit the resident
39 will occupy.

1 (4) If there is a transferor other than the resident, the transferor
2 shall be a party to the contract and the transferor's name and
3 address shall be specified.

4 (5) If the provider has used the name of any charitable or
5 religious or nonprofit organization in its title before January 1,
6 1979, and continues to use that name, and that organization is not
7 responsible for the financial and contractual obligations of the
8 provider or the obligations specified in the continuing care
9 contract, the provider shall include in every continuing care
10 contract a conspicuous statement which clearly informs the
11 resident that the organization is not financially responsible.

12 (6) The date the continuing care contract is signed by the
13 resident and, where applicable, any other transferor.

14 (7) The duration of the continuing care contract.

15 (8) A list of the services that will be made available to the
16 resident as required to provide the appropriate level of care. The
17 list of services shall include the services required as a condition for
18 licensure as a residential care facility for the elderly, including all
19 of the following:

20 (A) Regular observation of the resident's health status to ensure
21 that his or her dietary needs, social needs, and needs for special
22 services are satisfied.

23 (B) Safe and healthful living accommodations, including
24 housekeeping services and utilities.

25 (C) Maintenance of house rules for the protection of residents.

26 (D) A planned activities program, which includes social and
27 recreational activities appropriate to the interests and capabilities
28 of the resident.

29 (E) Three balanced, nutritious meals and snacks made
30 available daily, including special diets prescribed by a physician
31 as a medical necessity.

32 (F) Assisted living services.

33 (G) Assistance with taking medications.

34 (H) Central storing and distribution of medications.

35 (I) Arrangements to meet health needs, including arranging
36 transportation.

37 (J) A description of the monitoring or observation
38 methodology used by the provider for occupants of ~~residential~~
39 *independent* living units pursuant to Section 1788.5, including the
40 facility's policies regarding daily monitoring of ~~residential living~~

~~unit independent living occupants for immobilizing injuries in the unit, sign-out and sign-in procedures, and the availability of emergency signaling devices. The contract shall also state that the provider is not liable for death or injury to a resident if the provider failed to detect the resident's accident, injury, or emergency because the resident's emergency signal system was not activated or the resident failed to comply with the sign-in and sign-out policy of the facility.~~ devices.

(9) An itemization of the services that are included in the monthly fee and the services that are available at an extra charge. The provider shall attach a current fee schedule to the continuing care contract.

(10) The procedures and conditions under which residents may be voluntarily and involuntarily transferred from their designated living units. The transfer procedures, at a minimum, shall include provisions addressing all of the following circumstances under which transfer may be authorized:

(A) When, in the opinion of the continuing care retirement community management, a physician, appropriate specialist, or licensing official in consultation with the resident and appropriate representative, if any, any of the following conditions exists:

(i) The resident is nonambulatory. The definition of "nonambulatory," as provided in Section 13131, shall either be stated in full in the continuing care contract or be cited. If Section 13131 is cited, a copy of the statute shall be made available to the resident, either as an attachment to the continuing care contract or by specifying that it will be provided upon request. If a nonambulatory resident occupies a room that has a fire clearance for nonambulatory residence, transfer shall not be necessary.

(ii) The resident develops a physical or mental condition that endangers the health, safety, or well-being of the resident or another person, or causes an unreasonable and ongoing disturbance at the continuing care retirement community.

(iii) The resident's condition or needs require the resident's transfer to an assisted living care unit or skilled nursing facility for more efficient care or to protect the health of other residents, or because the level of care required by the resident exceeds that which may be lawfully provided in the living unit.

1 (iv) The resident's condition or needs require the resident's
2 transfer to a nursing facility, hospital, or other facility, and the
3 provider has no facilities available to provide that level of care.

4 (B) Transfer of a second resident when a shared
5 accommodation arrangement is terminated.

6 (C) Transfer is requested or required, by the provider or the
7 resident, for any other reason.

8 (11) Provisions describing any changes in the resident's
9 monthly fee and any changes in the entrance fee refund payable to
10 the resident that will occur if the resident transfers from any unit.

11 (12) The provider's continuing obligations if any, in the event
12 a resident is transferred from the continuing care retirement
13 community to another facility.

14 (13) The provider's obligations, if any, to resume care upon the
15 resident's return after a transfer from the continuing care
16 retirement community.

17 (14) The provider's obligations to provide services to the
18 resident while the resident is absent from the continuing care
19 retirement community.

20 (15) The conditions under which the resident must
21 permanently release his or her living unit.

22 (16) If real or personal properties are transferred in lieu of cash,
23 a statement specifying each item's value at the time of transfer, and
24 how the value was ascertained.

25 (A) An itemized receipt which includes the information
26 described above is acceptable if incorporated as a part of the
27 continuing care contract.

28 (B) When real property is or will be transferred, the continuing
29 care contract shall include a statement that the deed or other
30 instrument of conveyance shall specify that the real property is
31 conveyed pursuant to a continuing care contract and may be
32 subject to rescission by the transferor within 90 days from the date
33 that the resident first occupies the residential unit.

34 (C) The failure to comply with paragraph (16) shall not affect
35 the validity of title to real property transferred pursuant to this
36 chapter.

37 (17) The amount of the entrance fee.

38 (18) In the event two parties have jointly paid the entrance fee
39 or other payment which allows them to occupy the unit, the

1 continuing care contract shall describe how any refund of entrance
2 fees is allocated.

3 (19) The amount of any processing fee.

4 (20) The amount of any monthly care fee.

5 (21) For continuing care contracts that require a monthly care
6 fee or other periodic payment, the continuing care contract shall
7 include the following:

8 (A) A statement that the occupancy and use of the
9 accommodations by the resident is contingent upon the regular
10 payment of the fee.

11 (B) The regular rate of payment agreed upon (per day, week, or
12 month).

13 (C) A provision specifying whether payment will be made in
14 advance or after services have been provided.

15 (D) A provision specifying the provider will adjust monthly
16 care fees for the resident's support, maintenance, board, or
17 lodging, when a resident requires medical attention while away
18 from the continuing care retirement community.

19 (E) A provision specifying whether a credit or allowance will
20 be given to a resident who is absent from the continuing care
21 retirement community or from meals. This provision shall also
22 state, when applicable, that the credit may be permitted at the
23 discretion or by special permission of the provider.

24 (22) All continuing care contracts that include monthly care
25 fees shall address changes in monthly care fees by including either
26 of the following provisions:

27 (A) For prepaid continuing care contracts, which include
28 monthly care fees, one of the following methods:

29 (i) Fees shall not be subject to change during the lifetime of the
30 agreement.

31 (ii) Fees shall not be increased by more than a specified number
32 of dollars in any one year and not more than a specified number
33 of dollars during the lifetime of the agreement.

34 (iii) Fees shall not be increased in excess of a specified
35 percentage over the preceding year and not more than a specified
36 percentage during the lifetime of the agreement.

37 (B) For monthly fee continuing care contracts, except prepaid
38 contracts, changes in monthly care fees shall be based on projected
39 costs, prior year per capita costs, and economic indicators.

1 (23) A provision requiring that the provider give written notice
2 to the resident at least 30 days in advance of any change in the
3 resident's monthly care fees or in the price or scope of any
4 component of care or other services.

5 (24) A provision indicating whether the resident's rights under
6 the continuing care contract include any proprietary interests in the
7 assets of the provider or in the continuing care retirement
8 community, or both.

9 (25) If the continuing care retirement community property is
10 encumbered by a security interest that is senior to any claims the
11 residents may have to enforce continuing care contracts, a
12 provision shall advise the residents that any claims they may have
13 under the continuing care contract are subordinate to the rights of
14 the secured lender. For equity projects, the continuing care
15 contract shall specify the type and extent of the equity interest and
16 whether any entity holds a security interest.

17 (26) Notice that the living units are part of a continuing care
18 retirement community that is licensed as a residential care facility
19 for the elderly and, as a result, any duly authorized agent of the
20 department may, upon proper identification and upon stating the
21 purpose of his or her visit, enter and inspect the entire premises at
22 any time, without advance notice.

23 (27) A conspicuous statement, in at least 10-point boldface
24 type in immediate proximity to the space reserved for the
25 signatures of the resident and, if applicable, the transferor, that
26 provides as follows: "You, the resident or transferor, may cancel
27 the transaction without cause at any time within 90 days from the
28 date you first occupy your living unit. See the attached notice of
29 cancellation form for an explanation of this right."

30 (28) Notice that during the cancellation period, the continuing
31 care contract may be canceled upon 30 days' written notice by the
32 provider without cause, or that the provider waives this right.

33 (29) The terms and conditions under which the continuing care
34 contract may be terminated after the cancellation period by either
35 party, including any health or financial conditions.

36 (30) A statement that, after the cancellation period, a provider
37 may unilaterally terminate the continuing care contract only if the
38 provider has good and sufficient cause.

39 (A) Any continuing care contract containing a clause that
40 provides for a continuing care contract to be terminated for "just

1 cause,” “good cause,” or other similar provision, shall also
2 include a provision that none of the following activities by the
3 resident, or on behalf of the resident, constitutes “just cause,”
4 “good cause,” or otherwise activates the termination provision:

5 (i) Filing or lodging a formal complaint with the department or
6 other appropriate authority.

7 (ii) Participation in an organization or affiliation of residents,
8 or other similar lawful activity.

9 (B) The provision required by this paragraph shall also state
10 that the provider shall not discriminate or retaliate in any manner
11 against any resident of a continuing care retirement community for
12 contacting the department, or any other state, county, or city
13 agency, or any elected or appointed government official to file a
14 complaint or for any other reason, or for participation in a
15 residents’ organization or association.

16 (C) Nothing in this paragraph diminishes the provider’s ability
17 to terminate the continuing care contract for good and sufficient
18 cause.

19 (31) A statement that at least 90 days’ written notice to the
20 resident is required for a unilateral termination of the continuing
21 care contract by the provider.

22 (32) A statement concerning the length of notice that a resident
23 is required to give the provider to voluntarily terminate the
24 continuing care contract after the cancellation period.

25 (33) The policy or terms for refunding any portion of the
26 entrance fee, in the event of cancellation, termination, or death.
27 Every continuing care contract that provides for a refund of all or
28 a part of the entrance fee shall also do all of the following:

29 (A) Specify the amount, if any, the resident has paid or will pay
30 for upgrades, special features, or modifications to the resident’s
31 unit.

32 (B) State that if the continuing care contract is canceled or
33 terminated by the provider, the provider shall do both of the
34 following:

35 (i) Amortize the specified amount at the same rate as the
36 resident’s entrance fee.

37 (ii) Refund the unamortized balance to the resident at the same
38 time the provider pays the resident’s entrance fee refund.

39 (34) The following notice at the bottom of the signatory page:
40

“NOTICE”

(date)

This is a continuing care contract as defined by paragraph (8) of subdivision (c), or subdivision (l) of Section 1771 of the California Health and Safety Code. This continuing care contract form has been approved by the State Department of Social Services as required by subdivision (b) of Section 1787 of the California Health and Safety Code. The basis for this approval was a determination that (provider name) has submitted a contract that complies with the minimum statutory requirements applicable to continuing care contracts. The department does not approve or disapprove any of the financial or health care coverage provisions in this contract. Approval by the department is NOT a guaranty of performance or an endorsement of any continuing care contract provisions. Prospective transferors and residents are strongly encouraged to carefully consider the benefits and risks of this continuing care contract and to seek financial and legal advice before signing.

(35) The provider may not attempt to absolve itself in the continuing care contract from liability for its negligence by any statement to that effect, and shall include the following statement in the contract: “Nothing in this continuing care contract limits either the provider’s obligation to provide adequate care and supervision for the resident or any liability on the part of the provider which may result from the provider’s failure to provide this care and supervision.”

(b) A life care contract shall also provide that:

(1) All levels of care, including acute care and physicians’ and surgeons’ services will be provided to a resident.

(2) Care will be provided for the duration of the resident’s life unless the life care contract is canceled or terminated by the provider during the cancellation period or after the cancellation period for good cause.

(3) A comprehensive continuum of care will be provided to the resident, including skilled nursing, in a facility under the ownership and supervision of the provider on, or adjacent to, the continuing care retirement community premises.

(4) Monthly care fees will not be changed based on the resident’s level of care or service.

1 (5) A resident who becomes financially unable to pay his or her
2 monthly care fees shall be subsidized provided the resident's
3 financial need does not arise from action by the resident to divest
4 the resident of his or her assets.

5 (c) Continuing care contracts may include provisions that do
6 any of the following:

7 (1) Subsidize a resident who becomes financially unable to pay
8 for his or her monthly care fees at some future date. If a continuing
9 care contract provides for subsidizing a resident, it may also
10 provide for any of the following:

11 (A) The resident shall apply for any public assistance or other
12 aid for which he or she is eligible and that the provider may apply
13 for assistance on behalf of the resident.

14 (B) The provider's decision shall be final and conclusive
15 regarding any adjustments to be made or any action to be taken
16 regarding any charitable consideration extended to any of its
17 residents.

18 (C) The provider is entitled to payment for the actual costs of
19 care out of any property acquired by the resident subsequent to any
20 adjustment extended to the resident under paragraph (1), or from
21 any other property of the resident which the resident failed to
22 disclose.

23 (D) The provider may pay the monthly premium of the
24 resident's health insurance coverage under Medicare to ensure that
25 those payments will be made.

26 (E) The provider may receive an assignment from the resident
27 of the right to apply for and to receive the benefits, for and on
28 behalf of the resident.

29 (F) The provider is not responsible for the costs of furnishing
30 the resident with any services, supplies, and medication, when
31 reimbursement is reasonably available from any governmental
32 agency, or any private insurance.

33 (G) Any refund due to the resident at the termination of the
34 continuing care contract may be offset by any prior subsidy to the
35 resident by the provider.

36 (2) Limit responsibility for costs associated with the treatment
37 or medication of an ailment or illness existing prior to the date of
38 admission. In these cases, the medical or surgical exceptions, as
39 disclosed by the medical entrance examination, shall be listed in

1 the continuing care contract or in a medical report attached to and
2 made a part of the continuing care contract.

3 (3) Identify legal remedies which may be available to the
4 provider if the resident makes any material misrepresentation or
5 omission pertaining to the resident's assets or health.

6 (4) Restrict transfer or assignments of the resident's rights and
7 privileges under a continuing care contract due to the personal
8 nature of the continuing care contract.

9 (5) Protect the provider's ability to waive a resident's breach of
10 the terms or provisions of the continuing care contract in specific
11 instances without relinquishing its right to insist upon full
12 compliance by the resident with all terms or provisions in the
13 contract.

14 (6) Provide that the resident shall reimburse the provider for
15 any uninsured loss or damage to the resident's unit, beyond normal
16 wear and tear, resulting from the resident's carelessness or
17 negligence.

18 (7) Provide that the resident agrees to observe the off-limit
19 areas of the continuing care retirement community designated by
20 the provider for safety reasons. The provider may not include any
21 provision in a continuing care contract that absolves the provider
22 from liability for its negligence.

23 (8) Provide for the subrogation to the provider of the resident's
24 rights in the case of injury to a resident caused by the acts or
25 omissions of a third party, or for the assignment of the resident's
26 recovery or benefits in this case to the provider, to the extent of the
27 value of the goods and services furnished by the provider to or on
28 behalf of the resident as a result of the injury.

29 (9) Provide for a lien on any judgment, settlement, or recovery
30 for any additional expense incurred by the provider in caring for
31 the resident as a result of injury.

32 (10) Require the resident's cooperation and assistance in the
33 diligent prosecution of any claim or action against any third party.

34 (11) Provide for the appointment of a conservator or guardian
35 by a court with jurisdiction in the event a resident becomes unable
36 to handle his or her personal or financial affairs.

37 (12) Allow a provider, whose property is tax exempt, to charge
38 the resident on a pro rata basis property taxes, or in-lieu taxes, that
39 the provider is required to pay.

40 (13) Make any other provision approved by the department.

1 (d) A copy of the resident's rights as described in Section
2 1771.7 shall be attached to every continuing care contract.

3 (e) A copy of the current audited financial statement of the
4 provider shall be attached to every continuing care contract. For
5 a provider whose current audited financial statement does not
6 accurately reflect the financial ability of the provider to fulfill the
7 continuing care contract obligations, the financial statement
8 attached to the continuing care contract shall include all of the
9 following:

10 (1) A disclosure that the reserve requirement has not yet been
11 determined or met, and that entrance fees will not be held in
12 escrow.

13 (2) A disclosure that the ability to provide the services
14 promised in the continuing care contract will depend on successful
15 compliance with the approved financial plan.

16 (3) A copy of the approved financial plan for meeting the
17 reserve requirements.

18 (4) Any other supplemental statements or attachments
19 necessary to accurately represent the provider's financial ability to
20 fulfill its continuing care contract obligations.

21 (f) A schedule of the average monthly care fees charged to
22 residents for each type of residential living unit for each of the five
23 years preceding execution of the continuing care contract shall be
24 attached to every continuing care contract. The provider shall
25 update this schedule annually at the end of each fiscal year. If the
26 continuing care retirement community has not been in existence
27 for five years, the information shall be provided for each of the
28 years the continuing care retirement community has been in
29 existence.

30 (g) If any continuing care contract provides for a health
31 insurance policy for the benefit of the resident, the provider shall
32 attach to the continuing care contract a binder complying with
33 Sections 382 and 382.5 of the Insurance Code.

34 (h) The provider shall attach to every continuing care contract
35 a completed form in duplicate, captioned "Notice of
36 Cancellation." The notice shall be easily detachable, and shall
37 contain, in at least 10-point boldface type, the following statement:
38

2

4

7 If you cancel, any property transferred, any payments made by
8 you under the contract, and any negotiable instrument executed by
9 you will be returned within 14 calendar days after making
10 possession of the living unit available to the provider. Any security
11 interest arising out of the transaction will be canceled.

17 If you cancel, you must return possession of any living unit
18 delivered to you under this contract to the provider in substantially
19 the same condition as when you took possession.

25 To cancel this transaction, mail or deliver a signed and dated
26 copy of this cancellation notice, or any other written notice, or send
27 a telegram

28

30

32

34

36 transaction

38

39

1 SEC. 3. Section 1788.5 is added to the Health and Safety
2 Code, to read:

3 1788.5. (a) Notwithstanding any other provision of law, a
4 provider shall be deemed to have met the requirement for
5 observing or monitoring occupants of ~~residential~~ *independent*
6 living units within a continuing care retirement community by
7 implementing any procedure described by the provider in a plan
8 of operation that is approved by the department or by complying
9 with each of the following requirements:

10 (1) The provider shall maintain a general awareness of the
11 *independent living* residents' mental and physical health status. A
12 general awareness of the residents' mental and physical health
13 status shall be maintained through routine interactions with staff
14 who are not trained caregivers, such as dining or housekeeping
15 staff. However, no specific schedule, form, or record of these
16 interactions is required.

17 (2) If a significant change in the physical or mental condition
18 of ~~a~~ *an independent living* resident is observed, a staff member
19 trained to conduct resident assessments shall be informed and shall
20 assess the resident and create a written record of the assessment.

21 (3) Providers shall establish a system for determining on a daily
22 basis, for each occupant of ~~a residential~~ *an independent* living unit,
23 whether he or she has suffered an immobilizing injury in the unit.
24 This requirement may be met by monitoring use of the entrance to
25 the resident's unit, detecting motion inside the unit, determining
26 the resident's presence or absence from meals, or any other method
27 approved by the department.

28 (4) Providers shall maintain a system whereby *independent*
29 *living* residents are asked to sign out or sign in whenever they leave
30 the facility overnight, and upon their return.

31 (5) Providers shall offer residents the use of a signal system
32 operable from within each ~~residential~~ *independent* living unit for
33 use in emergencies.

34 ~~(b) No provider shall be liable for death or injury to a resident~~
35 ~~if the provider failed to detect a resident's accident, injury, or~~
36 ~~emergency because the resident's emergency signal system was~~
37 ~~not activated or the resident failed to comply with the sign-in or~~
38 ~~sign-out policy of the facility.~~

- 1 *(b) The facility shall obtain signed documentation from the*
- 2 *resident that he or she understands the monitoring and observation*
- 3 *requirements.*

O

